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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No.————

IANTHE B. HARDENBERGH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GABRIELLE HARDENBERGH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Ianthe B. Hardenbergh and Gabrielle Hardenbergh pray for writs of certiorari to review an opinion and judgments of the Court of Appeals for the Eighth Circuit (— Fed. (2d) —; R. 39-47) filed on June 24, 1952, affirm-

ing an order of redetermination of the Tax Court of the United States (17 T. C. 166; R. 15-23).

STATEMENT OF BASIS OF JURISDICTION TO REVIEW

This Court has jurisdiction under Section 1254 of the Judicial Code, 28 U. S. C. A., Sec. 1254, and under Section 5 of General Rule 38 of this Court, to review the decision of the Court of Appeals for the Eighth Circuit.

SUMMARY STATEMENT OF THE MATTER INVOLVED

George S. Hardenbergh (hereinafter called decedent) died intestate April 2, 1944. Petitioners and a son, George Adams Hardenbergh, were his sole surviving heirs. Petition for general administration of decedent's estate was filed in the Probate Court of Washington County, of Minnesota, on April 12, 1944. Matt W. Miller was appointed administrator and he qualified and served as such during the entire administration of decedent's estate. On September 20, 1944, petitioners, widow and daughter respectively of decedent, executed their coincidental and joint renunciation and rejection of any and all interest in decedent's estate and on that day it was filed with the Probate Court of Washington County, of Minnesota. Other than executing their renunciation, petitioners signed no other document of any other kind pertaining to the estate or to the property belonging thereto, had no part in the administration of the estate, and received no funds or property therefrom, except that Ianthe B. Hardenbergh purchased decedent's homestead from the administrator of the estate. On July 24, 1945, the Probate Court entered its Final Decree of Distribution in which it found that petitioners had filed renuncia-

tion of their interest in decedent's estate and that George Adams Hardenbergh was the person entitled to the residue of decedent's estate. On that day it decreed such residue to George Adams Hardenbergh and ordered that it be assigned to him. The residue consisted entirely of personal property. Respondent determined that by her renunciation each petitioner executed a transfer within the meaning of Federal gift tax law and asserted Federal gift tax liability against each petitioner measured by the agreed value of one-third of such residue, viz., $83,000 (R. 15-19).

QUESTION PRESENTED

Whether petitioners' coincidental and joint execution of their written renunciation of any and all interest in the estate of George S. Hardenbergh, deceased, constituted a transfer subject to gift tax within the meaning of Section 1000, Internal Revenue Code of the United States (26 U. S. C., 1946 Ed., Sec. 1000).

REASONS FOR ALLOWANCE OF THE WRIT

1. The decision below is in conflict with the decision of this court in *Harris v. Commissioner of Internal Revenue,* 340 U. S. 106, holding that there is no transfer within the meaning of the Federal gift tax law when the transfer is pursuant to the judgment of a court of competent jurisdiction.

2. The decision below is in conflict with the decision of the Probate Court of Washington County, of Minnesota, and other Minnesota Probate Courts in that the rule has been established in Minnesota by the decision of such courts that in cases of intestate succession an heir may renounce as readily as he may renounce an interest under a will, and since the Minnesota Supreme Court has never

decided otherwise, the rule of these decisions constitutes the law of Minnesota.

3. The decision below is in conflict with the decision rendered by the Court of Appeals for the Sixth Circuit in *Brown v. Routzahn,* 63 Fed. (2d) 914, Cert. Den. 290 U. S. 641.

WHEREFORE, the petitioners respectfully pray that writs of certiorari issue to the Court of Appeals for the Eighth Circuit and submit their brief, hereto attached, in support to this petition.

Respectfully submitted,

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IN THE

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IANTHE B. HARDENBERGH,

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vs.

COMMISSIONER OF INTERNAL REVENUE,

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 15-22) was promulgated August 6, 1951, and is found at 17 T. C. 166. The opinion of the Court of Appeals for the Eighth Circuit (R. 39-46) was filed June 24, 1952, and is found at —— Fed. (2d) ——.

SPECIFICATION OF ERRORS

The Court of Appeals for the Eighth Circuit erred in holding:

1. That petitioner's renunciation and the decree of the Probate Court of Washington County, Minnesota, constitute a transfer of property by gift within the meaning of the Federal Gift Tax Law. 26 U. S. C., 1946 Ed., Sec. 1000.

2. That in Minnesota in a case of intestate succession, heirs have no power to prevent the vesting of title in themselves.

3. That the Final Decree of the Probate Court of Washington County is not conclusive and binding on the Court of Appeals and on the Tax Court of the United States.

4. That the determinations of the Tax Court of the United States that there were deficiencies in petitioners' Federal Gift Tax liabilities for the calendar year 1944 were correct.

ARGUMENT

1. The decision below is in conflict with the decision of this court in *Harris v. Commissioner of Internal Revenue,* 340 U. S. 106.

In the *Harris* case it was held that only transfers based on a promise or agreement are reached by the Federal Gift Tax Law and that transfers effected by a court decree may not be taxed as gifts under that law. There the court said (page 184):

> "We, however, think that the gift tax statute is concerned with the source of rights, not with the manner in which rights at some distant time may be enforced. Remedies for enforcement will vary

> from state to state. It is 'the transfer' of the property with which the gift tax statute is concerned, not the sanctions which the law supplies to enforce transfers. If 'the transfer' of marital rights in property is effected by the parties, it is pursuant to a 'promise or agreement' in the meaning of the statute. If 'the transfer' is effected by court decree, no 'promise or agreement' of the parties is the operative fact. In no realistic sense is a court decree a 'promise or agreement' between the parties to a litigation. If finer, more legalistic lines are to be drawn, Congress must do it."

Petitioners' written renunciation effected no transfer. A renunciation never does. It prevents a transfer. The Final Decree of Distribution (R. 18-19) effected the only transfer. Thus, as in the *Harris* case, it is the court decree which is the operative fact. Moreover the written instrument of renunciation is a unilateral writing directed to the court, subject to the approval of the court, which in no sense constitutes "a promise or agreement" to or with George Adams Hardenbergh, such as was the case in the *Harris* case. The instrument of renunciation could not effectively designate a taker, which the agreement in the *Harris* case necessarily had to do. The only effect of the renunciation was to reject and refuse any rights which petitioners had in the decedent's estate. Only the probate court could determine the person or persons in such event to whom the estate would go. It was free to decree the residue to George Adams Hardenbergh, or to the person or persons it might thereafter find to be the heirs of George S. Hardenbergh. The transfer involved in the instant case, in contrast with the *Harris* case, depends entirely for its vitality upon the validity of the court decree, whereas in the *Harris* case, by the terms of the agreement the transfer would still

be legally binding even though the Nevada court decree was terminated.

It is clear that the Probate Court of Washington County acquired jurisdiction of decedent's estate, that its administration thereof was a proceeding in rem, that its jurisdiction included complete dominion over and control of every item of property of which decedent died seized, that until administration was ended by the entry of the Final Decree there could be no transfer of any property included in the estate except upon order of that court, and that its Final Decree is binding on all interested parties. In *Murray v. Calkins,* 191 Minn. 460, 252 N. W. 605, it is said:

> "* * * It is the principal function of the probate court in administering the estates of persons deceased to determine who is entitled to share therein, the proportions in which they take, and to assign to each his share. That is done by the decree of distribution, the incidence of which, as a judgment in rem, is not upon or against persons but on and in respect to property and the title thereto (Compare First Trust Co. v. Matheson, 187 Minn. 468, 246 N. W. 1, 87 A. L. R. 478). The judgment determines the descent or inheritance and, for the distributees, is the basis and conclusive evidence of title. Unless vacated, it is complete protection against all excluded claimants, and excludes all not thereby adjudicated to be distributees. It matters not that there may be distribution of the property of a person deceased without probate proceedings. Here there was the usual administration and distribution by a decree which is final."

In Minnesota there is no actual transfer of any portion of an estate until administration has been completed and the Final Decree of Distribution is made. The decree so finally entered relates back and makes the transfer effectual as of the date of death. (*State v. Probate Court,*

143 Minn. 77, 172 N. W. 902; *In the Matter of the Estate of Harold Thorson,* Deceased, 150 Minn. 464, 185 N. W. 508).

In Minnesota a probate court has no jurisdiction to enforce contracts by or between heirs, and its Final Decree may not be based on such agreements. (*Barnes v. Verry,* 174 Minn. 173, 218 N. W. 551; *Schaefer v. Thoeny,* 199 Minn. 610, 273 N. W. 190.)

2. The decision below is in conflict with the Minnesota rule established and followed by several of its probate courts, including the Probate Court of Washington County, Minnesota, that heirs may renounce in the case of intestate succession.

The Probate Court of Washington County, Minnesota, found that:

> "* * * Ianthe B. Hardenbergh and Gabrielle Hardenbergh have filed with this court a renunciation of their interest in the above named estate, and that George Adams Hardenbergh is the person entitled to the residue of said estate of said decedent * * *."

It decreed all of the residue of the estate of George S. Hardenbergh to George Adams Hardenbergh. It necessarily held that petitioners could renounce. In so doing it is in accord with the Probate Courts of Ramsey and Hennepin Counties of Minnesota. The Supreme Court of Minnesota has never held otherwise. It is then the law of Minnesota that there may be renunciation in cases of intestate succession. The decision of the Probate Court of Washington County is controlling because whether or not an heir may renounce is purely a question of Minnesota law and the decision of her courts is binding on the Court of Appeals and on the Tax Court of the United States. (*Blair v. Commissioner,* 300 U. S. 5; *Freuler v. Helvering,* 291 U. S. 35.) Minnesota has abandoned what

is said to be the general rule that there may be no renunciation in the case of intestate succession, because the reasons for the adoption of the rule no longer exist and therefore the rule should not be followed. The rule originated under the feudal system. In those times there was a requirement that there be a person from whom the overlord could exact services, rents and duties incident to the fee, and the rule was invented to prevent the heir from avoiding such duties. It is also said that for purposes of clarity of titles it was necessary to know exactly in whom title vested at the death of the ancestor. *Watkins on Descents* (First Ed.) pages 25, 26; (Fourth Ed.) pages 34, 230; *Williams on Real Property,* First Ed. (American Reprint; star pages) 66; Seventeenth Ed. (International) 91; Eighteenth Ed., pages 83, 84; Twenty-first Ed. page 86; Twenty-third Ed. pages 88, 89.

The correct and the established principle in Minnesota is that title to personal property of a decedent vests in his personal representative on death. *Bengtson v. Setterberg,* 227 Minn. 337, 35 N. W. (2d) 623. In *Dunnell's Minnesota Probate Law,* Volume 1, Sec. 735, it is said:

> "Upon the appointment and qualification of a representative, he becomes immediately invested, for the purposes of administration, with the legal title and right to the immediate possession of all the personal property owned by the decedent at the time of his death, which constitutes assets of his estate, wherever situated, regardless of whether he died testate or intestate. A domiciliary representative succeeds to the title of the personal property of the decedent in other jurisdictions except where there is an ancillary administration. Personal property does not pass directly from a decedent to legatees or distributees, but goes primarily to the executor or administrator, who is to apply it, so far as may be necessary, in paying the debts of the decedent and expenses of administration, and is then to pass the

> residue, if any, to the legatees or distributees. If the estate proves insolvent, nothing passes to them. So, in a practical sense, their interests are contingent and uncertain until, in due course of administration, it is ascertained that a surplus remains after the debts of the decedent and the expenses of administration are paid. Until that is done, it properly cannot be said that the legatees or distributees are certainly entitled to receive or enjoy any part of the property."

It is further stated at a later point:

> "While the representative holds en autre droit he has the legal title, and may at any time make an absolute disposition of the property for which he is accountable on his official bond. He holds both the possession and the property as an individual, though he holds them under a kind of trust. A representative is an officer of the law and his title to the assets of the estate is official and not personal, and cannot be affected, to the prejudice of the estate, by any acts of his prior to his appointment. His title relates back to the death of the decedent whenever necessary for the protection of the estate and innocent persons. The title, possession and control of the personal property of the estate should remain in the representative until the property is assigned by order of the probate court."

3. The decision below is in conflict with the decision rendered by the Court of Appeals for the Sixth Circuit in *Brown v. Routzahn,* 63 F. (2d) 914, cert. den. 290 U. S. 641.

In *Brown v. Routzahn,* 63 F. (2d) 914 (C. A. 6, 1933), cert. den. 290 U. S. 641, renunciation under a will was involved. The facts were as follows:

> Elizabeth Brown died testate in 1912. By item 2 of her will she gave to her husband, Harvey Brown, one-third of all of her property. Under a codicil she gave her husband a life interest in two houses. The

balance of her estate she devised to trustees, the husband to receive the income for life. The will was filed for probate and on December 28, 1912, the husband filed an election to take under the provision of the will. Almost eight years later on March 31, 1920, the husband filed a writing purporting to be a renunciation to his right of one-third of the estate, reserving, however, the life interest in the two houses and the income under the trust. The husband, Harvey H. Brown, died soon thereafter.

The Government assessed a tax on his estate, including the value of one-third of the estate of his deceased wife, claiming that he was entitled to a beneficial interest in the wife's estate, that the renunciation amounted to a transfer thereof, and that such transfer was made in contemplation of death.

The court held the tax erroneously assessed, saying at page 916:

"While it has been held that taxing statutes of this character concern themselves, not so much with title as with command over the property (*Saltonstall v. Saltonstall,* 276 U. S. 260, 48 S. Ct. 225, 72 L. Ed. 565; *Chase National Bank v. United States,* 278 U. S. 327, 49 S. Ct. 126, 73 L. Ed. 405, 63 A. L. R. 388; Corliss v. Bowers, 281 U. S. 376, 378, 50 S. Ct. 336, 74 L. Ed. 916; Tyler v. United States, 281 U. S. 497, 503, 50 S. Ct. 356, 74 L. Ed. 991, 69 A. L. R. 758; Burnet v. Gugenheim, 53 S. Ct. 369, 77 L. Ed. —, Feb. 6, 1933), we cannot think that within the scope of that purpose the statute here in question contemplates the taxing of the renunciation of testimentary gifts. Specifically stated, it is our view that, had Elizabeth Brown died in January of 1920, the renunciation here involved, made the following April, could not be held to be a transfer under the statute, even though it were made in contemplation of death. *If in that case the renunciation would not be a trans-*

fer, neither is it here. The decedent never owned nor had control of the property as donee. All that he had was a right to accept. Coupled with this right was an equal right to reject. Either could be exercised so long as the estate was in administration. He did reject. The government had no fixed prior right such as a precedent judgment creditor might have had. Cf. *Strom v. Wood,* supra; *Crumpler v. Barfield & Wilson Co.,* 114 Ga. 570, 40 S. E. 808; Schoonover v. Osborne, 193 Iowa 474, 187 N. W. 20, 27 A. L. R. 465. Its right, as claimed grew out of the act said to give rise to the tax liability, the exercise of an option. What it did was to collect a tax, not upon the transfer of an interest in property, but upon the exercise of a right to refuse a gift of property. This we think it had no right to do." (Italics supplied.)

CONCLUSION

For the reasons stated, petitioners respectfully pray that writs of certiorari issue to the Court of Appeals for the Eighth Circuit and that this court review the judgments of the court below in these cases.

Dated August 1, 1952.

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APPENDIX

Internal Revenue Code:

Sec. 1000. Imposition of Tax

(a) For the calendar year 1940 and ea ch calen-
dar year thereafter a tax, computed as pr ovided in
section 1001, shall be imposed upon the transfer
during such calendar year by any individ ual, resi-
dent or non-resident, of property by gift. C ift taxes
for the calendar years 1932-1939, inclusive, shall not
be affected by the provisions of this cha pter, but
shall remain subject to the applicable prov isions of
the Revenue Act of 1932, except as such p rovisions
are modified by legislation enacted subse quent to
the Revenue Act of 1932.

(b) The tax shall apply whether the tr ansfer is
in trust or otherwise, whether the gift is direct or
indirect, and whether the property is rea l or per-
sonal, tangible or intangible; but, in the case of a
nonresident not a citizen of the United Sta tes, shall
apply to a transfer only if the property is situated
within the United States.

* * * * *

(26 U. S. C., 1946 Ed., Sec. 1000.)

Sec. 1002. Transfer for Less Than Adeq uate and
Full Consideration.

Where property is transferred for less than an
adequate and full consideration in money o r money's
worth, then the amount by which the va lue of the
property exceeded the value of the con sideration
shall, for the purpose of the tax impose d by this
chapter, be deemed a gift, and shall be in cluded in

computing the amount of gifts made during the calendar year.

(26 U. S. C., 1946 Ed., Sec. 1002.)

Sec. 1005. Gifts Made in Property.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(26 U. S. C., 1946 Ed., Sec. 1005.)

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 263

IANTHE B. HARDENBERGH, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

GABRIELLE HARDENBERGH, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 15-22) is reported at 17 T. C. 166. The opinion of the Court of Appeals (R. 39-46) is not yet reported.

JURISDICTION

The judgments of the Court of Appeals were entered on June 24, 1952. (R. 46-47.) The petition for writs of certiorari was filed on August 8, 1952.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

The decedent died intestate leaving his wife, daughter and son as sole surviving heirs. Taxpayers herein, the wife and daughter, executed and filed an instrument labeled a "renunciation or relinquishment of their respective interests." Thereafter, all of the property available for distribution was distributed to the son by order of the probate court. The question presented is whether under Section 1000 of the Internal Revenue Code, imposing the gift tax, each taxpayer made a gift of her interest in the property to the son.

STATUTE AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra,* pp. 12-14.

STATEMENT

The facts found by the Tax Court (R. 16-19) may be summarized as follows:

Taxpayers Ianthe B. Hardenbergh and Gabrielle Hardenbergh are mother and daughter, respectively, and reside in Minnesota. (R. 16.) George S. Hardenbergh (the decedent), husband of Ianthe and father of Gabrielle, died intestate in St. Paul, Minnesota, on April 2, 1944, leaving taxpayers and a son by a former marriage, George Adams Hardenbergh, aged 26, as his sole surviving heirs at law. Ianthe was the stepmother of George and Gabrielle was his half sister. George was four years old when his father married Ianthe, who

reared him, and a devoted family relationship existed between all of them. (R. 16.)

During 1943, the year prior to his death, the decedent had several conversations with taxpayers in which he proposed leaving practically his entire estate to George in order to equalize somewhat the financial worth of his two children. At that time, Ianthe was worth $2,000,000 and Gabrielle was worth a large sum in her own right. This proposal was agreeable to taxpayers and they assented. Accordingly, the decedent arranged with his attorney for the preparation of a will carrying out this intention. On Saturday, April 1, 1944, the attorney brought the typewritten document to him to be executed, but he was too ill on that date to execute the will. It was decided to delay its execution until Monday, April 3d, but he died on April 2nd, before the will could be executed. (R. 16-17.)

On September 20, 1944, taxpayers filed in the probate court, where the estate of decedent was then being administered, "a renunciation or relinquishment of their respective interests in said estate," as follows (R. 17-18):

> We, Ianthe B. Hardenbergh and Gabrielle Hardenbergh, widow and daughter respectively of the above named George S. Hardenbergh, deceased, do hereby, coincidentally and jointly, definitely and finally renounce and reject, as of April 2, 1944, the date of death of said George S. Hardenbergh, any and all interest which we may then have had or may now have in and to the estate of said George S.

Hardenbergh. We do hereby release and forever discharge the said estate and every part thereof from any claim or interest which may heretofore have accrued or might at any time hereafter accrue to us or either of us by reason of the laws of succession of the State of Minnesota; and we further agree that we will not at any time hereafter assert any claim or interest of any kind, nature or description in or to said estate or any portion thereof.

We further respectfully state to the above named Court and to anyone interested in said estate that our purpose in renouncing any and all interest we may have in said estate is as follows: just prior to the death of George S. Hardenbergh, he, knowing that I, Ianthe B. Hardenbergh, had a large independent estate, and that I, Gabrielle Hardenbergh, had been amply provided for by trusts created by my grandfather, R. H. Bronson, and by my mother, Ianthe B. Hardenbergh, with our full knowledge and consent, had prepared a Last Will and Testament in which he devised and bequeathed substantially all of his estate to certain named trustees in trust for the sole benefit of his son, George Adams Hardenbergh. The provisions of said Last Will and Testament were agreeable to us. However, George S. Hardenbergh died before execution of said Last Will and Testament could be completed. We renounce all of interest in said estate so that the intention of the said George S. Hardenbergh may be carried out without delay or the intervention of other interests.

The probate court issued the final decree of distribution, on July 24, 1945, reading in part as follows (R. 18-19):

> * * * that * * * Ianthe B. Hardenbergh and Gabrielle Hardenbergh have fled with this court a renunciation of their interest in the above named estate, and that George Adams Hardenbergh is the person entitlel to the residue of said estate of said deceden.
>
> Now, Therefore, on motion of Natt W. Miller, representative of said estate, and by virtue of the power and authority vestedin this court by law, It Is Hereby Ordered, Adjudged And Decreed and the said court does hreby Order, Adjudge and Decree, that all andsingular the above described property and allother estate of said decedent in the State o Minnesota, subject to any lawful dispositio heretofore made, be and the same is hereby assigned to and vested in George Adams Hardenbergh.

All property of the estate available for distribution was delivered to and became the property of George. (R. 19.)

The estate of decedent consisted of both real and personal property, the gross value of which was $320,659.41, the value of the real estate being $29,378.08 and of the personalty, $291,281.33. All of the real estate was sold by the administrator of the estate under orders of the probate court for the payment of debts, expenses incurred in the administration, etc.; there remained for distribution the sum of $252,317.63. It was stipulated that if the acts of

taxpayers constituted taxable gifts, the interest of each taxpayer in the estate was of the value of $83,000. (R. 19.)

In determining the deficiencies here involved, the Commissioner held that each taxpayer made a gift in the amount of $83,000 to George. (R. 8, 14, 16.) The Tax Court sustained the action of the Commissioner. (R. 21-22.) The Court of Appeals for the Eighth Circuit affirmed. (R. 46.)

ARGUMENT

Both of the courts below correctly held (R. 21, 46) that the taxpayers, by divesting themselves of their respective interests in the decedent's estate so as to transfer them to the son, George Hardenbergh, made gifts to him within the purview of the gift tax statute.

1. Section 1000 of the Internal Revenue Code (Appendix, *infra,* p. 12) imposes a tax upon the transfer of property by gift, and the tax is applicable whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Section 86.2 of Treasury Regulations 108 (Appendix, *infra,* pp. 13-14) provides that all transactions whereby property or property rights or interests are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax.

Under these controlling provisions, taxpayers' written "renunciations" of their interests in the estate—for the express purpose of giving George

the whole estate in accordance with the decedent's wish (R. 18)—resulted in taxable gifts. "Property", in the form of the two interests in the estate, was "transferred" gratuitously and with donative aim. And the subsequent intervention of the probate court's decree in formally turning over the property to George is immaterial on the point of taxability since the statute taxes "indirect" as well as "direct" gifts. As the courts below held (R. 21, 46), what the probate court did was to deliver to George, at taxpayers' request, property they had given him. Congress used the terms "property", "transfer", "gift", and "indirect" in the broadest and most comprehensive sense (*Smith* v. *Shaughnessy,* 318 U. S. 176, 180; II Paul, *Federal Estate and Gift Taxation* (1942), Sec. 16.03, pp. 1065-1066) and the instant transaction clearly falls within the taxable class. *Cf. Commissioner* v. *Wemyss,* 324 U. S. 303, 306; *Estate of Rogers* v. *Commissioner,* 320 U. S. 410, 414; *Chase Nat. Bank* v. *United States,* 278 U. S. 327, 337.

2. The taxpayers contend, however, that there is a conflict with *Harris* v. *Commissioner,* 340 U. S. 106 (Pet. 3, 6-9). No such conflict exists. *Harris* dealt with the special statutory problems incident to an agreement and divorce decree relating to the mutual release of marital rights upon the ending of a marriage, and the case turned on whether there was "an adequate and full consideration in money or money's worth" for the transfer by the wife. Here, we have entirely different circumstances and no question of consideration; nobody contends that

George gave any consideration for the p property he received, and it is clear that taxpayers r relinquished their interests in order to make a gift in the most ordinary and conventional sense. Mo oreover, the *Harris* decision does not hold or indicate e that where, as here, the acts of the taxpayers are th the source of the transferee's rights it makes any d difference in taxability that a court decree implemen nts the transfer. See 340 U. S. at p. 111. The cas se suggested no more than that in the different ci ircumstances there presented the court decree was th the operative source of the rights.[1]

3. The taxpayers also say (Pet. 3-4, 9-11) that the decision below conflicts with the est tablished rule of the probate courts of Minnesota th hat heirs may renounce in the case of intestate succ cession. Taxpayers' argument is ambiguous and l they do not indicate in what way the courts bel low departed from the applicable Minnesota law.

It is the general rule that, if the ow wner of property dies without a will, the title to s such property passes by force of the rules of law, in n this case the Minnesota Statute of Intestate Su uccession (31 Minnesota Statutes Annotated (M.S. S.A.), Sections 525.13, 525.145, 525.16), and that tho ose so entitled by law have no power to prevent the v vesting of title

[1] In *Harris*, the divorce court could accept, t, reject, or modify the parties' prior agreement, pursuant to its s power "to decree a just and equitable disposition of both the co ommunity and the separate property of the parties". 340 U.S. a at 109-110. Here, on the other hand, the probate court could n not properly have rejected the taxpayers' relinquishment of the heir rights or have declared any person other than George to be the decedent's heir.

in themselves. *Bostian* v. *Milens,* 239 Mo. App. 555, 193 S.W. 2d 797; Note, *Renunciation of benefit under statute of descent and distribution,* 170 A.L.R. 435 (1947); *Coomes* v. *Finegan,* 233 Iowa 448, 7 N.W. 2d 729; 4 Page on Wills (Lifetime Ed.), Section 1401, p. 138. Upon such vesting, the heirs can, of course, dispose of the property as they please.

Here, the law of Minnesota is applicable with respect to the nature and vesting of property interests. *Blair* v. *Commissioner,* 300 U.S. 5, 9-10; *Freuler* v. *Helvering,* 291 U.S. 35, 45. Both of the courts below recognized this principle and they both concluded, after examination of the authorities, that the rule in Minnesota is the same as the general rule referred to above (R. 20-21, 43-46). That conclusion appears to be correct and it is certainly not clearly wrong. In the circumstances there is no occasion for review by this Court of the issue of State law. *Cf. Helvering* v. *Stuart,* 317 U.S. 154, 163; *MacGregor* v. *State Mutual Co.,* 315 U.S. 280; *Estate of Spiegel* v. *Commissioner,* 335 U.S. 701, 707-708.

The decree of the probate court in the instant case is not at variance with our position. It was based upon and issued in recognition of the transfer that taxpayers effected through their "renunciation". Recognizing that taxpayers had relinquished their vested interests in the estate, the court handed over the estate to the only other heir. As pointed out by the courts below (R. 21, 45-46), under Minnesota law the property in question passed

to taxpayers immediately upon the death of the decedent, subject only to the administrator's right of possession and qualified title for purposes of administration. *In re Estate of Butler,* 205 Minn. 60, 284 N.W. 889; *Bengtson* v. *Setterberg,* 227 Minn. 337, 35 N.W. 2d 623; *Brewster* v. *Gage,* 280 U.S. 327, 334. The taxpayers were the real parties in interest; they unquestionably had the right to transfer that interest; and the probate court was empowered to implement that transfer in the course of administration. Decision in gift tax cases turns not so much upon technicalities of title as upon the control of economic benefits (*Burnet* v. *Guggenheim,* 288 U.S. 280, 283-285; *Estate of Sanford* v. *Commissioner,* 308 U.S. 39, 43; *cf. Corliss* v. *Bowers,* 281 U.S. 376, 378) and it would be idle for taxpayers to deny that they were the real owners of the property when they executed the "renunciation", or at least that they owned a substantial interest in the estate.[2]

4. Taxpayers finally contend (Pet. 4, 11-12) that the instant decision conflicts with *Brown* v. *Routzahn,* 63 F. 2d 914 (C. A. 6th), certiorari denied, 290 U.S. 641, but here, too, there is no conflict. That case involved a will and not an intestacy, and it is therefore distinguishable irrespective of whether it can be considered correct. Both of the courts below noted the distinction (R. 20, 43) which is based upon the rule that the beneficiary may accept or reject a gift made by the voluntary act of the testator

[2] It will be noted from the "renunciation" (R. 17-18) that taxpayers specifically undertook to renounce "any and all interest" in the property forming the estate.

in executing his will (4 Page on Wills, *supra,* Section 1402, p. 140; *Brown* v. *Routzahn,* 63 F. 2d at 917); on the other hand, as we have pointed out above, where there is intestacy the rule is otherwise and the heirs cannot by renunciation prevent the passage of an interest in the estate to themselves.

CONCLUSION

The decision is correct; there is no conflict. The petition for writs of certiorari should be denied.

Respectfully submitted,

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SEPTEMBER 1952.

Internal Revenue Code:

SEC. 1000. IMPOSITION OF TAX.

(a) For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. Gift taxes for the calendar years 1932-1939, inclusive, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1932, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1932.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

* * * * *

(26 U. S. C. 1946 ed., Sec. 1000.)

SEC. 1002. TRANSFER FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of

the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(26 U. S. C. 1946 ed., Sec. 1002.)

SEC. 1005. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(26 U. S. C. 1946 ed., Sec. 1005.)

Treasury Regulations 108, promulgated under the Internal Revenue Code:

SEC. 86.2. *Transfers Reached.*—(a) *In general.* The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Thus, for example, a taxable transfer may be effected by the declaration of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of a contract of insurance, or the transfer of cash, certificates of deposit, or Federal, State, or municipal bonds. Various statutory provisions, which exempt bonds, notes, bills and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the gift tax since this tax is an excise tax on the transfer, and is not a tax on the subject of the gift. * * * Inasmuch as the tax also applies to gifts in-

directly made, all transactions whereby property or property rights or interests are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. See, further, section 86.8. * * *

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SEC. 86.8. *Transfers for a Consideration in Money or Money's Worth.*—Transfers reached by the statute are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration in money or money's worth to the extent that the value of the property transferred by the donor exceeds the value of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift.

SEC. 86.17. *Gifts Made in Property.*—A gift made in property is subject to the tax in the same manner as a gift of cash, and the amount of the gift is the value of the property at the date of the gift.

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